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ERIC D. MIDDLEMAS
EASTMAN CHEMICAL COMPANY
P.O. BOX 511
KINGSPORT, TN 37662

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OFFICE OF PETITIONS

In re Application of
Sam Richard Turner et al
Application No. 10/808,070
Filed: March 24, 2004
Attorney Docket No. 71351-04

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:DECISION ON PETITION
:UNDER 37 CFR 1.78(a)(3)
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This is a decision on the petition filed January 24, 2005, under 37 CFR § 1.78(a)(3), requesting to delete benefit claims to the prior-filed nonprovisional Application No. 10/743,112, filed December 22, 2003, as set forth in the amendment filed concurrently with the instant petition.

The petition is **DISMISSED AS MOOT**.

The filing of a petition under 37 CFR 1.78(a)(3) is unnecessary to delete a benefit claim. In this regard, petitioner's attention is directed to MPEP § 201.11 (G), under the subheading Deleting Benefit Claims, which states:

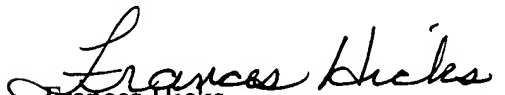
The examiner should consider whether any new prior art may now be available if a benefit claim is deleted. If an applicant is submitting an amendment to the specification or an ADS to delete a benefit claim after final rejection or action, the amendment or ADS will be treated under 37 CFR 1.116 (see MPEP § 714.12 and § 714.13). If the amendment or ADS to delete a benefit claim is submitted after the application has been allowed, the amendment or ADS will be treated under 37 CFR 1.312 (see § MPEP 714.16).

In view of the above, the petition under 37 CFR 1.78(a)(3) is dismissed as unnecessary.

In view of the dismissal of the instant petition as moot, the \$1,370 petition is unnecessary and will be credited to petitioner's deposit account in due course.

Any questions concerning this decision on petition may be directed to Wan Laymon at (571) 272-3220. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This matter is being referred to the Examiner of Technology Center AU 1711 for appropriate action on the amendment filed January 21, 2005 requesting deletion of the benefit claim.


Frances Hicks
Lead Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy